

ASSEMBLY BILL

No. 1141

Introduced by Assembly Member Dahle

February 22, 2013

An act to amend Sections 20020, 20021, 20025, 20027, 20030, 20035, 20040, and 20040.5 of, to amend the heading of Article 6 (commencing with Section 20035) of Chapter 5.5 of Division 8 of, to add Sections 20000.5, 20028, 20038, 20039, and 20044 to, to add Article 2.5 (commencing with Section 20016) to Chapter 5.5 of Division 8 of, to repeal Section 20026 of, and to repeal and add Section 20036 of, the Business and Professions Code, and to amend Sections 31001, 31012, 31220, 31300, 31302, 31302.5, 31303, 31306, and 31512 of, to add Section 31110.5 to, to repeal Sections 31301 and 31304 of, and to repeal and add Section 31201 of, the Corporations Code, relating to franchises.

LEGISLATIVE COUNSEL'S DIGEST

AB 1141, as introduced, Dahle. Franchises.

(1) Existing law provides for the regulation of franchises and establishes certain duties, obligations, and remedies for parties to a franchise agreement. The California Franchise Relations Act sets forth certain requirements related to the termination, nonrenewal, and transfer of franchises, among other things. The Franchise Investment Law authorizes regulations relative to the registration of an offer or sale of a franchise, unless exempted, and prohibits certain fraudulent and unfair practices.

This bill would revise both the California Franchise Relations Act and the Franchise Investment Law.

(A) With respect to the California Franchise Relations Act, existing law generally prohibits a franchisor from terminating a franchise prior

to expiration of its term except for good cause, which is defined to include the failure of a franchisee to comply with any lawful requirement of the franchise agreement after being given notice and a reasonable opportunity, which need not exceed 30 days, to cure the failure.

This bill would provide that good cause in a termination case consists of a substantial and material breach of the franchise agreement after the franchisee is given written notice and 60 days to cure the failure. The bill would also require the termination to be in accordance with the current terms and standards equally applicable to all franchisees, with limited exceptions.

Existing law provides that immediate termination of a franchise is deemed reasonable without an opportunity to cure upon the occurrence of certain events. One of those events is the failure by the franchisee to pay franchise fees or other amounts due with 5 days of receiving written notice that these amounts are overdue.

This bill would exempt situations where the franchisee establishes that the event was caused in substantial manner by conduct of the franchisor. The bill would require certain noncompliance by the franchisee allowing immediate termination to be substantial and material. The bill would provide 60 rather than 5 days for the franchisee to pay overdue amounts.

Existing law requires at least 180 days written notice to the franchisee of the franchisor's intention not to renew the franchise. Existing law imposes certain requirements on the franchisor in that regard relative to the franchisee's interests.

This bill would delete these provisions and instead require a franchisor to renew a franchise unless the franchisee has substantially and materially breached the franchise agreement, and would authorize the renewal to be for the same term as the previous term and would require the renewal to be under the franchise agreement terms then being offered to new franchisees. The bill would continue to require 180 days' written notice if the franchisor has grounds not to renew the franchise. The bill would also prohibit a franchisor, upon termination or expiration of a franchise, from enforcing against the franchisee any covenant not to compete.

Existing law provides that a franchisor, for a reasonable time after the death of the franchisee, may not deny the surviving spouse, heirs, or estate of the franchisee the opportunity to participate in the ownership of the franchise under the then-current qualifications and standards applicable to franchisees.

This bill would require the qualifications and standards to be reasonable.

Existing law requires a franchisor that terminates or fails to renew a franchise other than as permitted under the act to offer to repurchase the franchisee's resalable current inventory, as specified.

This bill would instead require the franchisor to reinstate the franchisee and to pay all associated damages, or to pay to the franchisee the fair market value of the franchise or franchise assets.

Existing law allows a franchisor and franchisee to agree to binding arbitration of claims arising under the act subject to certain conditions.

This bill would also require the arbitration procedures and costs to allow franchisees the opportunity to vindicate their rights under the act.

This bill would also add new provisions to the California Franchise Relations Act. The bill would require the parties to a franchise agreement to deal with each other in good faith. The bill would provide that certain acts and practices by a franchisor or subfranchisor are unfair or deceptive acts or practices or an unfair method of competition. The bill would provide certain rights to a franchisee if the franchisor develops a new location or grants a new franchise in essentially the same market in unreasonable proximity to an existing franchise. The bill would provide that franchisors owe a duty of competence to franchisees. The bill would provide that a condition, stipulation, or provision in a franchise agreement requiring the application of the law of another state is void. The bill would provide additional remedies for violations of provisions governing actions of franchisors relative to termination, nonrenewal, and transfer of franchises, including specified damages in certain cases, injunctive relief, and an award of attorney's fees and costs to a franchisee prevailing in an action.

(B) With respect to the Franchise Investment Law, existing law makes it unlawful for a person to offer or sell a franchise by means of a communication that includes an untrue statement of a material fact or omits to state a material fact necessary in order for the statements made to not be misleading.

This bill would also make it unlawful for a person offering or selling a franchise to intentionally misrepresent certain matters, including the prospects or chances for success of a franchise, the known required total investment for a franchise, and efforts to sell or establish more franchises than a market or market area can sustain.

Existing law provides that any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection

with the offer or sale of a franchise or who engages in other willful acts that operate as a fraud or deceit is guilty of a crime.

This bill would allow these matters to also be the subject of civil litigation, as specified.

Existing law prohibit specified acts with respect to franchise offers including, but not limited to, an act that operates as a fraud on a person.

This bill would prohibit the registration of any franchise offer that restricts venue for resolution of dispute solely to a forum outside this state.

Existing law makes it unlawful for a franchisor to restrict or inhibit the right of franchisees to join a trade association or to prohibit the right of free association among franchisees for lawful purposes. A plaintiff may seek injunctive relief and damages for a violation of this provision.

This bill would also make it unlawful for a franchisor to refuse to recognize and deal fairly and in good faith with an independent franchisee association.

Existing law provides that a person who offers or sells a franchise in violation of specified provisions of the Franchise Investment Law is liable for damages to the franchisee or subfranchisor, with certain exceptions. Existing law also provides rescission as a remedy for willful violations of these provisions.

This bill would extend civil liability for damages to any violation of the Franchise Investment Law. The bill, following purchase of a franchise, would allow a franchisee or subfranchisor to seek rescission, restitution, and ancillary damages without the requirement for the violation to be willful. The bill would extend liability for any violation of the Franchise Investment Law, on a joint and several basis, to various other parties associated with the franchisor. The bill would also provide for injunctive relief for any violation of the Franchise Investment Law.

Existing law imposes time limits of one, 2, or 4 years for the bringing of an action to enforce specific liabilities under the Franchise Investment Law. Existing law provides that if the franchisor delivers a written notice to the franchisee disclosing a violation of certain disclosure provisions, an action must be brought within 90 days.

This bill would require the written notice to include an offer of restitution of investment and ancillary damages and would extend the time for bringing an action to 180 days. The bill would allow 4 years to bring other actions to enforce liabilities under the Franchise Investment Law.

Existing law provides that any condition, stipulation, or provision purporting to bind any person acquiring a franchise to waive compliance with the Franchise Investment Law is void.

This bill would provide that certain other provisions, if included in the offer or sale of a franchise and associated documents, are also void.

Existing law provides that a willful violation of any provision of the Franchise Investment Law is a crime, unless specifically excepted. Because the bill would change the definition of certain crimes, it would impose a state-mandated local program.

(2) The bill would make other related changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known, and may be cited, as
2 “The Small Business Investment Protection Act.”

3 SEC. 2. Section 20000.5 is added to the Business and
4 Professions Code, to read:

5 20000.5. The Legislature hereby finds and declares all of the
6 following:

7 (a) The widespread use of one-sided and nonnegotiable franchise
8 agreements has created numerous problems for franchisees in
9 California. Many franchisees lack knowledge and experience with
10 franchise agreements, knowledge of particular industries and their
11 franchisors’ systems, and equality in bargaining power. In addition,
12 many franchisees invest their substantial assets, take loans
13 sometimes secured by their family homes, and enter into long-term
14 commercial leases and other obligations while looking to their
15 franchise businesses for their livelihoods.

16 (b) Unlike investments in securities, an investment in a franchise
17 may lead to substantial additional losses well beyond the initial
18 risk capital. Unlike employment, due to long-term contractual and
19 lease obligations, franchisees generally cannot resign and leave
20 without substantial liabilities.

(c) The inability of many franchisees to negotiate on an equal footing extends not only to individual first-time franchisees, but also to experienced multiunit and well-represented franchisees. As a result of one-sided franchise agreements, California franchisees have been the victims of economic opportunism of franchisors. Many franchisees have lost their substantial investments and sometimes more, including their homes, and others have had to file for bankruptcy. California franchisees have also been victimized by territorial encroachment, franchisor lack of competence and negligence, unfair required purchases, and other misconduct. The California Franchise Relations Act is designed to protect franchisees and end abuses from those practices and unfair contract provisions.

SEC. 3. Article 2.5 (commencing with Section 20016) is added to Chapter 5.5 of Division 8 of the Business and Professions Code, to read:

Article 2.5. Relationships Between Franchisor or Subfranchisor
and Franchisees

20016. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relations between the franchisor or subfranchisor and its franchisees:

(a) (1) The parties shall deal with each other in good faith in the performance and enforcement of the franchise agreement.

(2) “Good faith” for purposes of this subdivision means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(b) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition for a franchisor or subfranchisor to do any of the following:

(1) Restrict the right of a franchisee to join or participate in an association of franchisees to the extent the restriction is prohibited by Section 20016.4 or Section 31220 of the Corporations Code.

(2) Require a franchisee to purchase or lease goods or services in a manner prohibited by Section 20016.3.

(3) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising

1 services, or in any other business dealings, unless and to the extent
2 that any classification of or discrimination between franchisees is
3 any of the following:

4 (A) Based on franchises granted at materially different times,
5 and the discrimination is reasonably related to differences in time.

6 (B) Related to one or more programs for making franchises
7 available to persons with insufficient capital, training, business
8 experience, or education, or who lack other qualifications.

9 (C) Related to local or regional experimentation with, or
10 variations in, product or service lines or business formats or
11 designs.

12 (D) Related to efforts by one or more franchisees to cure
13 deficiencies in the operation of franchise businesses or defaults in
14 franchise agreements.

15 (E) Based on other reasonable distinctions considering the
16 purposes of this chapter and is not arbitrary.

17 (4) Obtain money, goods, services, anything of value, or any
18 other benefit from any other person with whom the franchisee does
19 business on account of that business unless the franchisor advises
20 the franchisee in advance of the franchisor's intention to receive
21 that benefit.

22 (5) Establish a similar business or grant a franchise for the
23 establishment of a similar business at a location within a
24 geographical area specifically designated as the exclusive territory
25 in a franchise previously granted to another franchisee in a
26 currently effective agreement, except under the circumstances or
27 conditions prescribed in the agreement. The fact that other
28 franchisees or the franchisor may solicit business or sell goods or
29 services to people residing in that geographical territory shall not
30 constitute the establishment of a similar business within the
31 exclusive territory.

32 (6) Require a franchisee at the time of entering into a franchise
33 to assent to a release, assignment, novation, or waiver that would
34 relieve any person from liability imposed by this chapter. Any
35 condition, stipulation, or provision purporting to bind any person
36 acquiring any franchise to waive compliance with any provision
37 of this chapter shall be void. This paragraph shall not bar or affect
38 the settlement of disputes, claims, or civil suits arising or brought
39 under this chapter.

1 (7) Impose on a franchisee by contract, rule, or regulation,
2 whether written or oral, any unreasonable and arbitrary standard
3 of conduct.

4 (8) Terminate a franchise in violation of Article 3 (commencing
5 with Section 20020), refuse to renew a franchise in violation of
6 Article 4 (commencing with Section 20025), or refuse to permit
7 a transfer of a franchise in violation of Article 4.4 (commencing
8 with Section 20027).

9 (c) The provisions of this chapter shall apply to all written or
10 oral arrangements with the franchisee, including, but not limited
11 to, the franchise offering, the franchise agreement, sales of goods
12 or services, leases and mortgages of real or personal property,
13 promises to pay, security interest, pledges, insurance contracts,
14 advertising contracts, construction or installation contracts,
15 servicing contracts, and all other arrangements in which the
16 franchisor or subfranchisor has any direct or indirect interest.

17 (d) In any proceedings, damages may be based on reasonable
18 approximations but not on speculation.

19 20016.1. (a) The commission of any unfair or deceptive act
20 or practice or unfair method of competition prohibited by Section
21 20016 shall constitute an unfair or deceptive act or practice
22 pursuant to Chapter 5 (commencing with Section 17200) of Part
23 2 of Division 7.

24 (b) Any person who sells or offers to sell a franchise in violation
25 of this chapter shall be liable to the franchisee or subfranchisor,
26 who may sue for damages caused thereby or for rescission or other
27 relief as the court may deem appropriate. Rescission shall not be
28 available to the plaintiff if the defendant proves that the plaintiff
29 knew the facts concerning the untruth or omission or that the
30 defendant exercised reasonable care and did not know, or, if the
31 defendant had exercised reasonable care, would not have known,
32 of the untruth or omission.

33 (c) The suit authorized under subdivision (b) may be brought
34 to recover the actual damages sustained by the plaintiff together
35 with the cost of the suit, including reasonable attorney's fees, and
36 the court may in its discretion increase the award of damages to
37 an amount not to exceed three times the actual damages sustained.

38 (d) Any person who becomes liable to make payments under
39 this section may recover contributions from any persons who, if
40 sued separately, would have been liable to make the same payment.

1 (e) A final judgment, order, or decree rendered against a person
2 under antitrust laws or this chapter shall be regarded as evidence
3 against that person in an action brought by any party against that
4 person under subdivision (a) or (b) as to all matters with respect
5 to which the judgment, order, or decree would be an estoppel
6 between the parties.

7 20016.2. (a) If a franchisor develops, or grants to a franchisee
8 the right to develop, a new outlet or location that sells essentially
9 the same goods or services under the same trademark, service
10 mark, trade name, logotype, or other commercial symbol as an
11 existing franchisee and the new outlet or location is in unreasonable
12 proximity to the existing franchisee's outlet or location and has
13 an adverse effect on the gross sales of the existing franchisee's
14 outlet or location, the existing adversely affected franchisee has a
15 cause of action for monetary damages in an amount calculated
16 pursuant to subdivision (b), unless any of the following apply:

17 (1) The franchisor has first offered the new outlet or location
18 to the existing franchisee on the same basic terms and conditions
19 available to the other potential franchisee and the existing
20 franchisee meets the reasonable current qualifications of the
21 franchisor including any financial requirements, or, if the new
22 outlet or location is to be owned by the franchisor, on the terms
23 and conditions that would ordinarily be offered to a franchisee for
24 a similarly situated outlet or location.

25 (2) The adverse impact on the existing franchisee's annual gross
26 sales, based on a comparison to the annual gross sales from the
27 existing outlet or location during the 12-month period immediately
28 preceding the opening of the new outlet or location, is determined
29 to have been less than 6 percent during the first 12 months of
30 operation of the new outlet or location.

31 (3) The existing franchisee, at the time the franchisor develops,
32 or grants to a franchisee the right to develop, a new outlet or
33 location, is not in compliance with the franchisor's then current
34 reasonable criteria for eligibility for a new franchise, not including
35 any financial requirements.

36 (4) The existing franchisee has been granted reasonable
37 territorial rights and the new outlet or location does not violate
38 those territorial rights.

39 (b) In establishing damages under a cause of action brought
40 pursuant to this section, the franchisee has the burden of proving

1 the amount of lost profits attributable to the compensable sales.
2 For purposes of this subdivision, “compensable sales” means the
3 annual gross sales from the existing outlet or location.
4 Compensable sales shall exclude any amount attributable to factors
5 other than the opening and operation of the new outlet or location.

6 (c) Any cause of action brought under this section shall be filed
7 within two years of the opening of the new outlet or location.

8 20016.3. (a) A franchisor shall not require that a franchisee
9 purchase goods, supplies, inventories, or services exclusively from
10 the franchisor or from a source or sources of supply specifically
11 designated by the franchisor where those goods, supplies,
12 inventories, or services of comparable quality are available from
13 sources other than those designated by the franchisor, unless
14 necessary for a lawful purpose that is justified on business grounds.

15 (b) The publication by the franchisor of a list of approved
16 suppliers of goods, supplies, inventories, or services, or the
17 requirement that goods, supplies, inventories, or services comply
18 with specifications and standards prescribed by the franchisor,
19 does not constitute designation of a source under subdivision (a).
20 Additionally, the reasonable right of a franchisor to disapprove a
21 supplier does not constitute a designation of source under
22 subdivision (a).

23 (c) This section does not apply to the principal goods, supplies,
24 inventories, or services manufactured by the franchisor, or any
25 goods, supplies, inventories, or services entitled to protection as
26 a trade secret.

27 20016.4. A franchisor shall not restrict a franchisee from
28 associating with other franchisees or from participating in a trade
29 association, and shall not retaliate against a franchisee for engaging
30 in these activities.

31 20016.5. The duty of good faith is imposed in situations
32 including, but not limited to, where the franchisor opens a new
33 outlet or location that has an adverse impact on an existing
34 franchisee. A determination of whether the duty of good faith with
35 respect to a new outlet or location has been met shall be made
36 pursuant to the provisions, standards, and procedures in Section
37 20016.2. “Good faith” for purposes of this section shall have the
38 same meaning as defined in paragraph (2) of subdivision (a) of
39 Section 20016.

1 20016.6. Franchisors shall owe a duty of competence to
2 franchisees operating in the state regarding all goods, services,
3 programs, advertising, and operating manuals required to be used
4 or provided to franchisees for their use.

5 SEC. 4. Section 20020 of the Business and Professions Code
6 is amended to read:

7 20020. Except as otherwise provided by this chapter, no
8 franchisor may terminate a franchise prior to the expiration of its
9 term, except for good cause, *and in accordance with the current*
10 *terms and standards established by the franchisor then equally*
11 *applicable to all franchisees, except with respect to any*
12 *classification of, or discrimination between, franchisees that is*
13 *reasonable, is based on proper and justifiable distinctions*
14 *considering the purposes of this chapter, and is not arbitrary. In*
15 *any proceeding under this section, the franchisor shall have the*
16 *burden of proving that a classification or discrimination meets the*
17 *requirements of this section. Good cause in a termination case*
18 ~~shall include, but not be limited to, the failure of the franchisee to~~
19 ~~comply with any~~ *consist of a substantial and material breach of*
20 *any lawful requirement of the franchise agreement after being*
21 *given written notice thereof and a reasonable opportunity, which*
22 ~~in no event need be more than 30~~ *60 days, to cure the failure.*

23 SEC. 5. Section 20021 of the Business and Professions Code
24 is amended to read:

25 20021. If during the period in which the franchise is in effect,
26 there occurs any of the following events which is relevant to the
27 franchise, immediate notice of termination without an opportunity
28 to cure, shall be deemed reasonable *unless the franchisee*
29 *establishes that the event was caused in substantial manner by*
30 *conduct of the franchisor:*

31 (a) The franchisee or the business to which the franchise relates
32 has been the subject of an order for relief in bankruptcy, judicially
33 determined to be insolvent, all or a substantial part of the assets
34 thereof are assigned to or for the benefit of any creditor, or the
35 franchisee admits his or her inability to pay his or her debts as they
36 come due;

37 (b) The franchisee abandons the franchise by failing to operate
38 the business for five consecutive days during which the franchisee
39 is required to operate the business under the terms of the franchise,
40 or any shorter period after which it is not unreasonable under the

1 facts and circumstances for the franchisor to conclude that the
2 franchisee does not intend to continue to operate the franchise,
3 unless such failure to operate is due to fire, flood, earthquake, or
4 other similar causes beyond the franchisee's control;

5 (c) The franchisor and franchisee agree in writing to terminate
6 the franchise;

7 (d) The franchisee makes any material misrepresentations
8 relating to the acquisition of the franchise business or the franchisee
9 engages in conduct which reflects materially and unfavorably upon
10 the operation and reputation of the franchise business or system;

11 (e) The franchisee fails, for a period of 10 days after notification
12 of noncompliance, to comply *substantially* with any federal, state,
13 or local law or regulation applicable *and material* to the operation
14 of the franchise;

15 (f) The franchisee, after curing any failure in accordance with
16 Section 20020, engages in the same *substantial and material*
17 noncompliance whether or not ~~such~~ *the* noncompliance is corrected
18 after notice;

19 (g) The franchisee repeatedly fails to comply with one or more
20 *substantial and material* requirements of the franchise, whether
21 or not corrected after notice;

22 (h) The franchised business or business premises of the franchise
23 are seized, taken over, or foreclosed by a government official in
24 the exercise of his or her duties, or seized, taken over, or foreclosed
25 by a creditor, lienholder, or lessor, provided that a final judgment
26 against the franchisee remains unsatisfied for 30 days (unless a
27 supersedeas or other appeal bond has been filed); or a levy of
28 execution has been made upon the license granted by the franchise
29 agreement or upon any property used in the franchised business,
30 and it is not discharged within five days of such levy;

31 (i) The franchisee is convicted of a felony or any other criminal
32 misconduct which is relevant *and material* to the operation of the
33 franchise;

34 (j) The franchisee fails to pay any franchise fees or other
35 amounts due to the franchisor or its affiliate within ~~five~~ 60 days
36 after receiving written notice that ~~such~~ *the* fees are overdue; or

37 (k) The franchisor makes a reasonable determination that
38 continued operation of the franchise by the franchisee will result
39 in an imminent danger to public health or safety.

1 SEC. 6. Section 20025 of the Business and Professions Code
2 is amended to read:

3 20025. (a) No franchisor may fail to renew a franchise unless
4 ~~such franchisor provides the franchisee at least 180 days prior~~
5 ~~written notice of its intention not to renew; and has substantially~~
6 ~~and materially breached the franchise agreement. If the franchisee~~
7 ~~has not substantially and materially breached the franchise~~
8 ~~agreement at time of renewal, the franchisee may renew for the~~
9 ~~same term as the previous term. The renewal shall be under the~~
10 ~~franchise agreement terms then being offered new franchisees. If~~
11 ~~the franchisor has grounds not to renew a franchise under this~~
12 ~~chapter, then the franchisor shall provide at least 180 days prior~~
13 ~~written notice of its intention to not renew as set forth in this~~
14 ~~chapter.~~

15 ~~(a) During the 180 days prior to expiration of the franchise the~~
16 ~~franchisor permits the franchisee to sell his business to a purchaser~~
17 ~~meeting the franchisor's then current requirements for granting~~
18 ~~new franchises, or if the franchisor is not granting a significant~~
19 ~~number of new franchises, the then current requirements for~~
20 ~~granting renewal franchises; or~~

21 ~~(b) (1) The refusal to renew is not for the purpose of converting~~
22 ~~the franchisee's business premises to operation by employees or~~
23 ~~agents of the franchisor for such franchisor's own account,~~
24 ~~provided, that nothing in this paragraph shall prohibit a franchisor~~
25 ~~from exercising a right of first refusal to purchase the franchisee's~~
26 ~~business; and~~

27 ~~(2) Upon expiration of the franchise, the franchisor agrees not~~
28 ~~to seek to enforce any covenant of the nonrenewed franchisee not~~
29 ~~to compete with the franchisor or franchisees of the franchisor; or~~

30 ~~(c) Termination would be permitted pursuant to Section 20020~~
31 ~~or 20021; or~~

32 ~~(d) The franchisee and the franchisor agree not to renew the~~
33 ~~franchise; or~~

34 ~~(e) The franchisor withdraws from distributing its products or~~
35 ~~services through franchises in the geographic market served by~~
36 ~~the franchisee, provided that:~~

37 ~~(1) Upon expiration of the franchise, the franchisor agrees not~~
38 ~~to seek to enforce any covenant of the nonrenewed franchisee not~~
39 ~~to compete with the franchisor or franchisees of the franchisor;~~
40 ~~and~~

~~(2) The failure to renew is not for the purpose of converting the business conducted by the franchisee pursuant to the franchise agreement to operation by employees or agents of the franchisor for such franchisor's own account; and~~

~~(3) Where the franchisor determines to sell, transfer, or assign its interest in a marketing premises occupied by a franchisee whose franchise agreement is not renewed pursuant to this paragraph:~~

~~(A) The franchisor, during the 180-day period after giving notice offers such franchisee a right of first refusal of at least 30 days' duration of a bona fide offer, made by another to purchase such franchisor's interest in such premises; or~~

~~(B) In the case of the sale, transfer, or assignment to another person of the franchisor's interest in one or more other controlled marketing premises, such other person in good faith offers the franchisee a franchise on substantially the same terms and conditions currently being offered by such other person to other franchisees; or~~

~~(f) The franchisor and the franchisee fail to agree to changes or additions to the terms and conditions of the franchise agreement, if such changes or additions would result in renewal of the franchise agreement on substantially the same terms and conditions on which the franchisor is then customarily granting renewal franchises, or if the franchisor is not then granting a significant number of renewal franchises, the terms and conditions on which the franchisor is then customarily granting original franchises. The franchisor may give the franchisee written notice of a date which is at least 30 days from the date of such notice, on or before which a proposed written agreement of the terms and conditions of the renewal franchise shall be accepted in writing by the franchisee. Such notice, when given not less than 180 days before the end of the franchise term, may state that in the event of failure of such acceptance by the franchisee, the notice shall be deemed a notice of intention not to renew at the end of the franchise term.~~

~~(b) Upon the termination or expiration of the franchise, the franchisor shall not seek to enforce, against the franchisee, any covenant not to compete.~~

~~SEC. 7. Section 20026 of the Business and Professions Code is repealed.~~

~~20026. Nothing in Section 20025 shall prohibit a franchisor from offering or agreeing before expiration of the current franchise~~

1 ~~term to extend the term of the franchise for a limited period in~~
2 ~~order to satisfy the time of notice of nonrenewal requirement of~~
3 ~~that section.~~

4 SEC. 8. Section 20027 of the Business and Professions Code
5 is amended to read:

6 20027. (a) No franchisor shall deny the surviving spouse, heirs,
7 or estate of a deceased franchisee or the majority shareholder of
8 the franchise the opportunity to participate in the ownership of
9 the franchise under a valid franchise agreement for a reasonable
10 time after the death of the franchisee or majority shareholder of
11 the franchisee. During that time the surviving spouse, heirs, or
12 estate of the deceased shall either satisfy all of the then current
13 *and reasonable* qualifications for a purchaser of a franchise or sell,
14 transfer, or assign the franchise to a person who satisfies the
15 franchisor's then current *and reasonable* standards for new
16 franchisees. The rights granted pursuant to this section shall be
17 granted subject to the surviving spouse, heirs, or estate of the
18 deceased maintaining all standards and obligations of the franchise.

19 (b) Nothing in subdivision (a) shall prohibit a franchisor from
20 exercising the right of first refusal to purchase a franchise after
21 receipt of a bona fide offer to purchase the franchise by a proposed
22 purchaser of the franchise.

23 ~~(c) This article shall not apply to any agreement or contract in~~
24 ~~effect prior to January 1, 1984, except an agreement or contract~~
25 ~~of an indefinite duration. This section shall not apply to any bequest~~
26 ~~or intestate succession that took effect prior to January 1, 1984.~~

27 SEC. 9. Section 20028 is added to the Business and Professions
28 Code, to read:

29 20028. (a) (1) No franchisor shall refuse to permit a transfer
30 of ownership of a franchise, or of a proprietorship, partnership,
31 corporation, or other business entity that is a franchisee or
32 subfranchisor, except for good cause.

33 (2) For purposes of this subdivision, good cause shall include,
34 but not be limited to, any of the following:

35 (A) The failure of a proposed transferee to meet any of the
36 franchisor's or subfranchisor's reasonable qualifications or
37 standards then in effect for a franchisee or subfranchisor.

38 (B) The fact that the proposed transferee or any affiliated person
39 of the proposed transferee is a competitor of the franchisor or
40 subfranchisor.

(C) The inability or unwillingness of the proposed transferee to agree in writing to comply with and be bound by all lawful obligations imposed by the franchisor, including, without limitation, all instruction and training obligations, and to sign the current form of the franchise agreement used by the franchisor or subfranchisor.

(D) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor and to cure any default in the franchise agreement or other agreements with the franchisor existing at the time of the proposed transfer.

(b) A franchisor or subfranchisor shall have 30 days after being notified in writing of a proposed transfer to approve or disapprove in writing a proposed transfer of ownership or control of a franchise, or of a proprietorship, partnership, corporation, or other business entity that is a franchisee or subfranchisor, stating its reason for disapproval. If a franchisor or subfranchisor fails to approve or disapprove a proposed transfer in writing within that period, the franchisor or subfranchisor shall be deemed to have approved such transfer.

SEC. 10. Section 20030 of the Business and Professions Code is amended to read:

20030. All notices of termination or nonrenewal required by this chapter:

(a) Shall be in writing;

(b) Shall be posted by registered, certified or other receipted mail, delivered by telegram, or personally delivered to the franchisee; and

(c) Shall contain a statement of intent to terminate or not renew the franchise:

(1) Together with *all of* the reasons therefor, and

(2) The effective date of such termination or nonrenewal-~~or expiration.~~

SEC. 11. The heading of Article 6 (commencing with Section 20035) of Chapter 5.5 of Division 8 of the Business and Professions Code is amended to read:

Article 6. ~~Offers to Repurchase Inventory Remedies~~

SEC. 12. Section 20035 of the Business and Professions Code is amended to read:

1 20035. In the event a franchisor terminates or fails to renew a
2 franchise other than in accordance with the provisions of this
3 chapter, the franchisor shall offer to repurchase from the franchisee
4 the franchisee's resalable current inventory meeting the franchisor's
5 present standards that is required by the franchise agreement or
6 commercial practice and held for use or sale in the franchised
7 business at the lower of the fair wholesale market value or the
8 price paid by the franchisee. The franchisor shall not be liable for
9 offering to purchase personalized items which have no value to
10 the franchisor in the business which it franchises *reinstate the*
11 *franchisee in accordance with the provisions of this chapter and*
12 *pay all damages caused thereby, or at the election of the*
13 *franchisee, shall pay to the franchisee the fair market value of the*
14 *franchise or the fair market value of the franchise assets.*

15 SEC. 13. Section 20036 of the Business and Professions Code
16 is repealed.

17 20036. ~~The franchisor may offset against any repurchase offer~~
18 ~~made pursuant to Section 20035 any sums owed the franchisor or~~
19 ~~its subsidiaries by the franchisee pursuant to the franchise or any~~
20 ~~ancillary agreement.~~

21 SEC. 14. Section 20036 is added to the Business and
22 Professions Code, to read:

23 20036. Any franchisee establishing a reasonable probability
24 of prevailing in an action under this chapter shall be entitled to a
25 temporary restraining order and preliminary injunction enjoining
26 termination or nonrenewal pending trial without any showing of
27 irreparable injury or posting bond.

28 SEC. 15. Section 20038 is added to the Business and
29 Professions Code, to read:

30 20038. Any franchisee prevailing in an action under this chapter
31 shall be entitled to an award of reasonable attorney's fees and
32 costs.

33 SEC. 16. Section 20039 is added to the Business and
34 Professions Code, to read:

35 20039. A condition, stipulation, or provision in a franchise
36 agreement requiring the application of the law of another state in
37 lieu of this chapter is void.

38 SEC. 17. Section 20040 of the Business and Professions Code
39 is amended to read:

20040. Nothing contained in this chapter shall limit the right of a franchisor and franchisee to agree before or after a dispute has arisen to binding arbitration of claims under this chapter, provided ~~that all of the following:~~

(a) The standards applied in ~~such~~ *the* arbitration are not less than the requirements specified in this chapter; ~~and.~~

(b) The arbitrator or arbitrators employed in ~~such~~ *the* arbitration are chosen from a list of impartial arbitrators supplied by the American Arbitration Association or other impartial person.

(c) *The arbitration procedures and costs allow franchisees the opportunity to vindicate their rights under this chapter.*

SEC. 18. Section 20040.5 of the Business and Professions Code is amended to read:

20040.5. A provision in a franchise agreement restricting venue *solely* to a forum outside this state is void with respect to any claim arising under or relating to a franchise agreement involving a franchise business operating within this state.

SEC. 19. Section 20044 is added to the Business and Professions Code, to read:

20044. This chapter shall be liberally construed to effectuate its purposes.

SEC. 20. Section 31001 of the Corporations Code is amended to read:

31001. The Legislature hereby finds and declares that the widespread sale of franchises is a relatively new form of business ~~which~~ *that* has created numerous problems both from an investment and a business point of view in the State of California. Prior to the enactment of this division, the sale of franchises was regulated only to the limited extent to which the Corporate Securities Law of 1968 applied to those transactions. California franchisees have suffered substantial losses where the franchisor or his or her representative has not provided full and complete information regarding the franchisor-franchisee relationship, the details of the contract between franchisor and franchisee, and the prior business experience of the franchisor.

It is the intent of this law to provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered. Further, it is the intent of this law to prohibit the sale of franchises where the sale would lead to fraud or a likelihood *of deceit* or that the franchisor's promises

1 would not be fulfilled, and to protect the franchisor and franchisee
2 by providing a better understanding of the relationship between
3 the franchisor and franchisee with regard to their business
4 relationship.

5 SEC. 21. Section 31012 of the Corporations Code is amended
6 to read:

7 31012. ~~“Fraud” and “deceit”~~ *“Fraud,” “deceit,”*
8 *“misrepresentation,” and “omissions”* are not limited to common
9 law fraud or deceit, *and only actual reliance is required for*
10 *recovery for fraud, deceit, misrepresentation, or omissions under*
11 *this division.*

12 SEC. 22. Section 31110.5 is added to the Corporations Code,
13 to read:

14 31110.5. The commissioner shall not register any franchise
15 offer that contains a provision in a franchise agreement, contrary
16 to Section 20040.5 of the Business and Professions Code,
17 restricting venue for resolution of disputes solely to a forum outside
18 this state.

19 SEC. 23. Section 31201 of the Corporations Code is repealed.

20 ~~31201. It is unlawful for any person to offer or sell a franchise~~
21 ~~in this state by means of any written or oral communication not~~
22 ~~enumerated in Section 31200 which includes an untrue statement~~
23 ~~of a material fact or omits to state a material fact necessary in order~~
24 ~~to make the statements made, in the light of the circumstances~~
25 ~~under which they were made, not misleading.~~

26 SEC. 24. Section 31201 is added to the Corporations Code, to
27 read:

28 31201. (a) It is unlawful for any person in connection with the
29 offer, sale, or purchase of any franchise, or in any filing with the
30 commissioner, to do any of the following, directly or indirectly:

- 31 (1) Employ any device, scheme, or artifice to defraud.
32 (2) Make any untrue statements of a material fact or omit to
33 state a material fact necessary to make the statement, in light of
34 the circumstances under which they are made, not misleading.
35 (3) Engage in any act that operates or that would operate as a
36 fraud or deceit upon any person.

37 (b) It is unlawful for any person when offering or selling a
38 franchise to do any of the following:

- 39 (1) Intentionally misrepresent the prospects or chances for
40 success of a proposed or existing franchise.

1 (2) Intentionally misrepresent, by failure to disclose or
2 otherwise, the known required total investment for a franchise.

3 (3) Intentionally misrepresent, or fail to disclose, efforts to sell
4 or establish more franchises than is reasonable to expect the market
5 or market area for the particular franchise to sustain.

6 SEC. 25. Section 31220 of the Corporations Code is amended
7 to read:

8 31220. It shall be a violation of this division for any franchisor,
9 directly or indirectly, through any officer, agent, or employee, to
10 restrict or inhibit the right of franchisees to join a trade association
11 or to prohibit the right of free association among franchisees for
12 any lawful ~~purposes~~ *purpose, or to refuse to recognize and deal*
13 *fairly and in good faith with any independent franchisee*
14 *association.* Notwithstanding Section 31410, a violation of this
15 section shall not constitute a crime.

16 SEC. 26. Section 31300 of the Corporations Code is amended
17 to read:

18 31300. Any person who offers or sells a franchise in violation
19 of ~~Section 31101, 31110, 31119, 31200, or 31202, or in violation~~
20 ~~of any provision of this division that provides an exemption from~~
21 ~~the provisions of Chapter 2 (commencing with Section 31110) of~~
22 ~~Part 2 or any portions of Part 2, this division~~ shall be liable to the
23 franchisee or subfranchisor, who may sue for damages ~~caused~~
24 ~~thereby, and if the violation is willful, the franchisee may also sue~~
25 *following the purchase of the franchise, or for rescission,*
26 *restitution, and ancillary damages, unless, in the case of a violation*
27 ~~of Section 31200 or 31202, the defendant proves that the plaintiff~~
28 knew the facts concerning the untruth or omission, or that the
29 defendant exercised reasonable care and did not know, or, if he or
30 she had exercised reasonable care, would not have known, of the
31 untruth or omission.

32 SEC. 27. Section 31301 of the Corporations Code is repealed.

33 ~~31301. Any person who violates Section 31201 shall be liable~~
34 ~~to any person (not knowing or having cause to believe that such~~
35 ~~statement was false or misleading) who, while relying upon such~~
36 ~~statement shall have purchased a franchise, for damages, unless~~
37 ~~the defendant proves that the plaintiff knew the facts concerning~~
38 ~~the untruth or omission or that the defendant exercised reasonable~~
39 ~~care and did not know, (or if he had exercised reasonable care~~
40 ~~would not have known) of the untruth or omission.~~

1 SEC. 28. Section 31302 of the Corporations Code is amended
2 to read:

3 31302. Every person who directly or indirectly controls a
4 person liable under ~~Section 31300 or 31301~~ *this chapter*, every
5 partner in a firm so liable, every principal executive officer or
6 director of a corporation so liable, every person occupying a similar
7 status or performing similar functions, every employee of a person
8 so liable who materially aids in the act or transaction constituting
9 the violation, are also liable jointly and severally with and to the
10 same extent as such person, unless the other person who is so liable
11 had no knowledge of or reasonable grounds to believe in the
12 existence of the facts by reason of which the liability is alleged to
13 exist.

14 SEC. 29. Section 31302.5 of the Corporations Code is amended
15 to read:

16 31302.5. (a) Any person who violates ~~Section 31220~~ *any*
17 *provision of this chapter* may be sued in the superior court in the
18 county in which the defendant resides or where a franchise affected
19 by the violation does business, for temporary and permanent
20 injunctive relief and for damages, ~~if any, and the costs of suit,~~
21 ~~including reasonable attorneys' fees.~~ A plaintiff shall not be
22 required to allege or prove that actual damages have been suffered
23 in order to obtain injunctive relief.

24 ~~(b) No action shall be maintained to enforce any liability created~~
25 ~~under Section 31220 unless brought before the expiration of two~~
26 ~~years after the violation upon which it is based or the expiration~~
27 ~~of one year after the discovery by the plaintiff of the facts~~
28 ~~constituting such violation, whichever occurs first.~~

29 *(b) A plaintiff prevailing in a claim for violation of any provision*
30 *of this chapter shall also be awarded costs of suit, including*
31 *reasonable attorney's fees.*

32 SEC. 30. Section 31303 of the Corporations Code is amended
33 to read:

34 31303. No action shall be maintained to enforce any liability
35 ~~created under Section 31300~~ *under this chapter* unless brought
36 before the expiration of four years after the act or transaction
37 constituting the violation, ~~the expiration of one year after the~~
38 ~~discovery by the plaintiff of the fact constituting the violation,~~ or
39 ~~90~~ 180 days after delivery to the franchisee of a written notice
40 disclosing any violation of Section 31110 or 31200, which notice

1 shall be approved as to form by the commissioner, ~~whichever shall~~
2 ~~first expire. The notice shall include an offer of restitution of~~
3 ~~investment and ancillary damages to the franchisee.~~

4 SEC. 31. Section 31304 of the Corporations Code is repealed.

5 ~~31304. No action shall be maintained to enforce any liability~~
6 ~~created under Section 31301 unless brought before the expiration~~
7 ~~of two years after the violation upon which it is based, expiration~~
8 ~~of one year after the discovery by the plaintiff of the facts~~
9 ~~constituting such violation, or 90 days after delivery to the~~
10 ~~franchisee of a written notice disclosing any violation of Section~~
11 ~~31201 or 31202 which notice shall be approved as to form by the~~
12 ~~commissioner, whichever shall first expire.~~

13 SEC. 32. Section 31306 of the Corporations Code is amended
14 to read:

15 ~~31306. Except as explicitly provided in this chapter, no civil~~
16 ~~liability in favor of any private party shall arise against any person~~
17 ~~by implication from or as a result of the violation of any provision~~
18 ~~of this law or any rule or order hereunder.~~

19 31306. Nothing in this chapter shall *preempt, supersede*, limit,
20 *or repeal* any liability ~~which~~ *that* may exist by virtue of any other
21 statute or under common law if this law were not in effect,
22 *including, but not limited to, common law fraud.*

23 SEC. 33. Section 31512 of the Corporations Code is amended
24 to read:

25 31512. Any condition, stipulation, or provision purporting to
26 bind any person acquiring any franchise to waive compliance with
27 any provision of this law or any rule or order hereunder is void
28 *and of no effect, without limitation. All no representation, no*
29 *reliance, and choice of law, other than California law, clauses in*
30 *the offer or sale of franchises, including in the franchise agreement,*
31 *franchise disclosure document, or separate disclaimer, are void*
32 *and of no effect.*

33 SEC. 34. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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